

ESTTA Tracking number: **ESTTA252020**

Filing date: **12/01/2008**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

## Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

### Opposer Information

Name	Gonzaga University
Granted to Date of previous extension	11/30/2008
Address	502 E. Boone Avenue Spokane, WA 99258 UNITED STATES

Attorney information	Alicia Grahn Jones Kilpatrick Stockton LLP 1100 Peachtree Street Suite 2800 Atlanta, GA 30309 UNITED STATES tmadmin@kilpatrickstockton.com, aljones@kilpatrickstockton.com, lkemp@kilpatrickstockton.com Phone:404-815-6500
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### Applicant Information

Application No	77382118	Publication date	06/03/2008
Opposition Filing Date	12/01/2008	Opposition Period Ends	11/30/2008
Applicant	Super Bakery, Incorporated Suite 455 5700 Corporate Drive Pittsburgh, PA 15237 UNITED STATES		

### Goods/Services Affected by Opposition

Class 032. All goods and services in the class are opposed, namely: non-cafeinated hydrating sports drinks
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### Grounds for Opposition

Deceptiveness	Trademark Act section 2(a)
False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)

### Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	1931285	Application Date	09/28/1994
Registration Date	10/31/1995	Foreign Priority Date	NONE
Word Mark	GONZAGA UNIVERSITY BULLDOGS		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 041. First use: First Use: 1921/00/00 First Use In Commerce: 1921/00/00 educational services in the nature of courses at university and postgraduate levels; library services; arranging and conducting athletic competitions

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	BULLDOGS		
Goods/Services	Educational services, apparel, and other goods and services commonly associated with a university as an educational institution and its athletic department.		

Attachments	Gozanga NOO.pdf ( 10 pages )(78460 bytes )
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### Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Alicia Grahm Jones/
Name	Alicia Grahm Jones
Date	12/01/2008

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

CORPORATION OF GONZAGA	)	
UNIVERSITY d/b/a GONZAGA	)	
UNIVERSITY,	)	
	)	
Opposer,	)	In the matter of Application
v.	)	Serial No. 77/382,118
	)	for the mark BULLDOGADE
	)	
	)	
SUPER BAKERY, INC.,	)	
	)	
	)	
Applicant.	)	

**NOTICE OF OPPOSITION**

Opposer Corporation of Gonzaga University d/b/a Gonzaga University, a Washington educational institution located at 502 East Boone Avenue, Spokane, Washington 99258 (“Opposer” or “the University”), believes it will be damaged by the registration of the mark BULLDOGADE (Serial No. 77/382,118), and opposes the same pursuant to 15 U.S.C. § 1063 and 37 C.F.R. §§ 2.101, 2.104(a). The grounds for this opposition are as follows:

1. On information and belief, on January 28, 2008, Applicant Super Bakery, Inc. (“Applicant”) filed an intent-to-use application to register the mark BULLDOGADE (Serial No. 77/382,118) (“Applicant’s Mark”) for use in connection with “sports drinks and performance drinks” in International Class 32. The recitation of goods was amended by the Applicant to “non-caffeinated hydrating sports drinks” in International Class 32.
2. Applicant owns at least twenty pending applications to register marks that incorporate collegiate mascot trademarks of well-known universities and colleges in addition to the letter string “ADE” for use in connection with sports drinks. Attached as **Exhibit 1** is a chart

reflecting Applicant's applications that incorporate collegiate mascot trademarks. Applicant is attempting to register marks that trade on the goodwill and fame of various colleges and universities as well as professional sports teams across the United States.

3. The application for Applicant's Mark was first published for opposition in the *Official Gazette* dated June 3, 2008. The University timely filed extensions of time to oppose this application, and thus is allowed until December 1, 2008 to file this Notice of Opposition.

4. The University was founded in 1881 and is a private educational institution of higher learning. The University offers undergraduate and graduate educational and athletic programs, and enrolled a total of 6,923 students in the 2007-2008 academic year.

5. Since as early as 1921, the University and its athletic teams have used the BULLDOGS mark in connection with a broad range of goods and services. The University's athletic department, and its many teams and organizations use the BULLDOGS mark, which is the University's nickname, mascot, and athletic identity.

6. The University is a member of the West Coast Conference, which participates in the NCAA Division I. The University has sixteen varsity sports teams, which are all referred to as the BULLDOGS.

7. For decades (and well before Applicant adopted its BULLDOGADE mark), the University has licensed its BULLDOGS trademark in connection with a variety of products. The University's licensed products bearing the BULLDOGS mark are sold across the United States.

8. The University owns a federal registration for the mark GONZAGA UNIVERSITY BULLDOGS (Reg. No. 1,931,285) for "educational services in the nature of courses at university and postgraduate levels; library services; arranging and conducting athletic competitions" in International Class 41, registered on October 31, 1995, claiming a date of first

use of 1921. A true and correct copy of the Certificate of Registration for the mark GONZAGA UNIVERSITY BULLDOGS (Reg. No. 1,931,285) is attached as **Exhibit 2**.

9. The University has complied with all requirements necessary to maintain its registration of the mark GONZAGA UNIVERSITY BULLDOGS (No. 1,931,285), which is now incontestable under 15 U.S.C. § 1065.

10. The University's trademarks in paragraphs 5-9 are collectively referred to as the "University's BULLDOGS Marks."

11. As a result of the University's longstanding and extensive use, the University's BULLDOGS Marks are symbolic of the extensive goodwill and consumer recognition established by the University. The University's BULLDOGS Marks have attained a high degree of recognition and distinctiveness throughout the United States, and particularly in the western United States, in connection with educational services, apparel, and other goods and services commonly associated with a university as an educational institution and its athletic department. By virtue of the University's expenditure of substantial amounts of time, effort, and money in advertising and promoting its goods and services, the University's BULLDOGS Marks have come to identify the University's athletics and other goods and services. Purchasers and prospective purchasers, as well as other members of the public, are familiar with and identify the University's BULLDOGS Marks, and understand and expect that a wide variety of goods and services offered under the University's BULLDOGS Marks are affiliated, sponsored, or licensed by the University. Indeed, the University's BULLDOGS Marks have become well-known for the University's goods and services, particularly in the western United States.

12. The University will be damaged by the registration of Applicant's BULLDOGADE mark because the mark and its associated goods so resemble the University's

BULLDOGS Marks and the associated goods and services as to be likely to cause confusion, mistake, and deception. Indeed, Applicant's Mark incorporates the BULLDOG mark in an attempt to trade off the goodwill of the University's BULLDOGS Marks. Moreover, the goods offered under Applicant's Mark, sports drinks, are similar to the goods and services offered under the University's BULLDOGS Marks. On information and belief, Applicant's goods offered under Applicant's Mark will be sold to students, fans, and alumni of the University.

13. Persons familiar with the University's BULLDOGS Marks are likely to believe erroneously that Applicant's goods are offered by the University, or are authorized, licensed, endorsed, or sponsored by the University, and registration of Applicant's Mark on the Principal Register will be inconsistent with the University's rights in the University's BULLDOGS Marks.

14. Applicant's applied-for-mark also falsely suggests a connection with the University, in violation of Section 2(a) of the Lanham Act, 15 U.S.C. § 1052(a).

15. The filing fee in the amount of \$300.00 is enclosed. The Commissioner is authorized to debit the deposit account of Kilpatrick Stockton LLP (deposit account no. 11-0860) for any deficiency in the required fee.

WHEREFORE, the University requests that Application Serial No. 77/382,118 be refused registration and this Notice of Opposition be sustained in its favor.

Respectfully submitted,

/s/ Alicia Grahm Jones  
R. Charles Henn Jr.  
Alicia Grahm Jones  
KILPATRICK STOCKTON LLP  
1100 Peachtree Street  
Suite 2800  
Atlanta, Georgia 30309-4530  
(404) 815-6500  
Attorneys for Opposer

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing NOTICE OF OPPOSITION was served on counsel for Applicant on December 1, 2008 via first class mail to:

John W. McIlvaine  
The Webb Law Firm  
436 Seventh Avenue  
700 Koppers Building  
Pittsburgh, PA 15219

/s/ Alicia Grahm Jones \_\_\_\_\_  
Counsel for Opposer

**CERTIFICATE OF TRANSMITTAL**

I hereby certify that a true copy of the foregoing NOTICE OF OPPOSITION is being filed electronically with the TTAB via ESTTA on this day, December 1, 2008.

/s/ Alicia Grahm Jones \_\_\_\_\_  
Counsel for Opposer

# **EXHIBIT 1**



**Trademark Applications Owned by Applicant**

<b>Trademark</b>	<b>Application Number</b>	<b>Goods</b>
<b>BADGERADE</b>	77-382271	“sports drinks” in International Class 32
<b>BRONCOADE</b>	77-382281	“sports drinks” in International Class 32
<b>CATADE</b>	77-382985	“sports drinks” in International Class 32
<b>COUGARADE</b>	77-382996	“sports drinks” in International Class 32
<b>COWBOYADE</b>	77-383001	“sports drinks” in International Class 32
<b>FALCONADE</b>	77-384233	“sports drinks and performance drinks” in International Class 32
<b>HURRICANEADE</b>	77-382960	“sports drinks” in International Class 32
<b>HUSKIEADE</b>	77-384238	“sports drinks and performance drinks” in International Class 32
<b>IRISHADE</b>	77-382991	“sports drinks” in International Class 32
<b>JAYHAWKADE</b>	77-383006	“sports drinks” in International Class 32
<b>WOLVERINEADE</b>	77-384032	“sports drinks and performance drinks” in International Class 32
<b>KNIGHTADE</b>	77-383021	“sports drinks” in International Class 32
<b>PANTHERADE</b>	77-383064	“sports drinks” in International Class 32
<b>MOUNTAINEERADE</b>	77-383048	“sports drinks” in International Class 32
<b>SOONERADE</b>	77-383960	“sports drinks” in International Class 32
<b>VOLUNTEERADE</b>	77-384000	“sports drinks” in International Class 32
<b>CORNHUSKERADE</b>	77-384196	“sports drinks and performance drinks” in International Class 32
<b>LONGHORNADE</b>	77-383038	“sports drinks, namely, lemonade and limeade” in International Class 32

**Trademark Applications Owned by Applicant**

<b>REBELADE</b>	77-383860	“non-caffeinated hydrating sports drinks” in International Class 32
<b>SPARTANADE</b>	77-383891	“hydrating sports drinks” in International Class 32

# **EXHIBIT 2**

**Int. Cl.: 41**

**Prior U.S. Cl.: 107**

**United States Patent and Trademark Office**

**Reg. No. 1,931,285**

**Registered Oct. 31, 1995**

**SERVICE MARK  
PRINCIPAL REGISTER**

**GONZAGA UNIVERSITY BULLDOGS**

CORPORATION OF GONZAGA UNIVERSITY,  
THE (WASHINGTON NON-PROFIT CORPO-  
RATION), DBA GONZAGA UNIVERSITY  
EAST 502 BOONE AVENUE  
SPOKANE, WA 992580001

FOR: EDUCATIONAL SERVICES IN THE  
NATURE OF COURSES AT UNIVERSITY AND  
POSTGRADUATE LEVELS; LIBRARY SERV-  
ICES; ARRANGING AND CONDUCTING ATH-

LETIC COMPETITIONS , IN CLASS 41 (U.S. CL.  
107).

FIRST USE 0-0-1921; IN COMMERCE  
0-0-1921.

NO CLAIM IS MADE TO THE EXCLUSIVE  
RIGHT TO USE "UNIVERSITY", APART FROM  
THE MARK AS SHOWN.

SER. NO. 74-579,642, FILED 9-28-1994.

JESSIE B. BILLINGS, EXAMINING ATTORNEY